

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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XENG LO,

Plaintiff,  
v.

Case No. 20-cv-965-pp

MILWAUKEE COUNTY OFFICE  
OF CORPORATION COUNSEL,

Defendant.

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**ORDER DISMISSING CASE WITHOUT PREJUDICE FOR FAILURE TO PAY  
INITIAL PARTIAL FILING FEE**

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Plaintiff Xeng Lo is representing himself in this §1983 case. When he signed the complaint on June 14, 2020, he listed his address as “HOC—8885 South 68th Street, Milwaukee, Wisconsin.” Dkt. No. 1 at 1. That is the location of the Milwaukee County House of Correction. <https://county.milwaukee.gov/EN/House-of-Correction>.

When the plaintiff filed the lawsuit, he asked the court to allow him to proceed without prepaying the filing fee. Dkt. No. 2. The Prison Litigation Reform Act applies to this case because the plaintiff was incarcerated when he filed his complaint. That statute allows prisoners to proceed with a case without prepaying the full filing fee if, when funds exist, they pay an initial partial filing fee. 28 U.S.C. §1915. On August 6, 2020, the court ordered that by the end of the day on August 27, 2020, the plaintiff must pay an initial partial filing fee of \$6.00. Dkt. No. 9.

The court did not receive the \$6.00 initial partial filing fee by August 7, 2020, and on August 11, 2020, a notice the court had sent the plaintiff at the HOC was returned as undeliverable and unable to be forwarded. Dkt. No. 10.

On August 20, 2020, the court received a letter from the plaintiff, saying, “Yes you can take the \$6.00 fee from my account, I give you guys permission and I will try my best to make a monthly payment as best as possible.” Dkt. No. 11. The return address on the envelope in which the plaintiff sent this letter was the address of the House of Corrections. Dkt. No. 11-1.

The next day, in a text-only order, the court explained to the plaintiff that the court could not arrange payment of the fee. Dkt. No. 12. The court stated that the plaintiff needed to follow his institution’s policies to direct payment to the court. Id.

The court mailed a copy of the order to the plaintiff at the House of Correction. Id. A couple of weeks later, on September 9, 2020, the order was returned to the court as undeliverable. Dkt. No. 13. The court contacted the plaintiff’s supervising agent, learned the plaintiff was at the Milwaukee County Jail and mailed the order to the plaintiff at the jail. Id.

On September 15, 2020, the court received another letter from the plaintiff, explaining that he hadn’t paid the fee because he had been transferred between the Milwaukee County Jail and the House of Correction due to health issues. Dkt. No. 14. He explained that he was trying to get better, and he assured the court he had the money to pay the fee. Id. Once again, he gave the court permission to withdraw the fee from his account. Id.

The next day, on September 16, 2020, the court issued an order repeating that it could not arrange payment of the fee and that the plaintiff had to follow his institution’s policies to direct payment to the court. Dkt. No. 15. Because the plaintiff had been moved between institutions, and because of his health issues, the court gave the plaintiff a deadline of October 16, 2020 to pay the initial partial filing fee. Id. The court warned the plaintiff that failure to pay

the fee by the deadline could result in dismissal of his case. *Id.* The court mailed that order to the plaintiff at the Milwaukee County Jail. *Id.*

The October 16, 2020 deadline has come and gone, and the plaintiff has neither paid the fee nor provided the court with a written explanation of why he could not pay the fee. The court checked the Milwaukee Sheriff's Department inmate locator web site; it shows that the plaintiff still is in custody at the Milwaukee County Jail. <http://www.inmatesearch.mkesheriff.org/>. It has been over a month since the court advised the plaintiff that it needed to receive the initial partial filing fee by October 16, 2020 for the plaintiff to proceed with the case.

The court **ORDERS** that this case is **DISMISSED WITHOUT PREJUDICE** based on the plaintiff's failure to pay the initial partial filing fee. Because the court dismisses the case *without* prejudice, the plaintiff may refile his complaint, subject to the relevant statute of limitations, assuming he has the funds to pay an initial partial filing fee.

Dated in Milwaukee, Wisconsin, this 27th day of October, 2020.

**BY THE COURT:**



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**HON. PAMELA PEPPER**  
**Chief United States District Judge**